

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE MANUEL HERNANDEZ-CRUZ,

Defendant.

CASE NO. 8:11CR310

AMENDED TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report ("PSR") in this case. The government adopted the PSR (Filing No. 29), and the Defendant filed objections to the PSR (Filing No. 30).¹ See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant objects to ¶ 21 of the PSR, in which an upward adjustment is assessed under U.S.S.G. § 2B1.1(b)(11)(A)(ii). Alternatively, the Defendant requests a sentence of time served. The objection will be heard at sentencing, and the government has the burden of proof by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's objection to ¶ 21 of the PSR will be heard at sentencing;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion

¹It is the Court's practice to only schedule combined change of plea and sentencing hearings are only scheduled when the parties are confident there will be no objections to the PSR. The purpose of this practice is to enable the parties and the Court to benefit from the full sentencing schedule.

challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 11th day of January, 2012.

BY THE COURT:

s/ Laurie Smith Camp
Chief United States District Judge